

87-SBE-036

BEFORE THE STATS BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

IA ~~the~~ Hatter of the Appeal of }
LOUIS N. MILLION } No. 86A-0536-VN

For Appellant: Louis N. Million,
in pro per.

For Respondent: Israel Rogers
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Louis N. Million against a proposed assessment of additional personal income tax in the amount of \$1,826 for the year 1982.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The sole issue **presented** for **our** decision is whether the Franchise Tax Board **properly** computed **appellant's** tax as a part-year resident under section 17041, subdivision (b).

During the first seven and a half **months of** 1982, appellant worked overseas for a **Hong Kong company**. He then spent a month in Texas on vacation before **working in** Saudi Arabia for about a month and a half. Appellant returned to this state **for the remaining two months of the year**. For 1982, **appellant** filed a nonresident return in which he **reported** California adjusted gross income of \$25,049 and taxable income **of \$15,136**. Appellant **calculated** his **tax** liability to be \$364, but since \$1,354 was withheld from his California wages, he obtained a tax **refund**. **However,** appellant did not include in his **California income** the \$48,655 that he earned abroad.

On review, respondent agreed that appellant was a part-year resident, but concluded that he had not computed his California **tax** liability in the correct manner. **Respondent redetermined** appellant's tax, employing the **apportionment** formula set forth under section 17041, Subdivision (b), which provides:

There shall be **imposed** for each taxable year upon the entire taxable income of every nonresident or part-year resident which is derived from **sources** in this state . . . a tax which shall be **equal** to the tax computed under subdivision (a) as if the nonresident or **part-year** resident were a **resident** multiplied by the ratio **of** California source adjusted gross **income** to **total adjusted gross income** from all sources.

Section 17041, subdivision (a), imposes a personal income **tax on** the entire taxable income of **every** resident of this state.

The Franchise Tax Board first determined that appellant's California adjusted gross income should be increased to \$26,549 and his total adjusted gross income **was** \$68,386 after inclusion of his IRA contribution and

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foreign income earned **abroad.**^{2/} Respondent then calculated that appellant's ratio of California **source** adjusted gross income to total adjusted gross income from all sources to be 38.82 percent (\$26,549 divided by \$68,386). Applying this apportionment ratio to the tax on appellant's total taxable income of \$65,791, respondent determined that his California tax liability was \$2,190. After taking into account the self-assessment of \$364, respondent issued the resultant deficiency assessment of \$1,826.

It is well settled that respondent's determinations with regard to the imposition of taxes are presumptively correct, and the taxpayer has the burden of showing error in those determinations. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., Mar. 4, 1980; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal, Sept. 10, 1969.) In the instant matter, appellant argues that, as someone who lived in California for only 2-3 months, he should only be required to pay tax on income that he earned in this state. Appellant contends that the Franchise Tax Board has unfairly included **income** that he earned abroad in the computation of his tax. Appellant has misconstrued respondent's action. As shown above, section 17041, subdivision (b), requires that a part-year resident's California tax liability be computed by dividing his California adjusted gross income by his total adjusted gross income and then applying this apportionment ratio against the total tax appellant would have incurred had he been a California resident. Since appellant's total income is used merely to compute the applicable ratio used to determine California source income, respondent is not taxing appellant on any non-California source income. Since appellant has not demonstrated

^{2/} Respondent disallowed a \$2,000 deduction for **contributions** to an individual retirement account apparently because appellant was already an active participant in his employer's pension plan. (Rev. & Tax. Code, § 17240; Appeal of Kathy J. Schell, Cal. St. Bd. of Equal., July 30, 1985.) Appellant does not contest respondent's disallowance of his IRA deduction.

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error in respondent's determination of his tax pursuant to this section, we have no choice ^{3/}but to sustain respondent's action in this matter.-

3/ Appellant has also argued that it is unfair for respondent to assess interest on the deficiency assessment while it is being appealed by him. Under section **18688**, however, it is well settled that the assessment of interest on an unpaid deficiency assessment is mandatory and continues to accrue until the tax is paid. (Appeal of Frank R. and C. A. Moothart, Cal. St. Rd. of Equal., Feb. 8, 1978.)

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Louis N. Million against a proposed assessment of additional personal income tax in the amount of \$1,826 for the year 1982, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of May, 1987, by the State Board of Equalization, with Board **Members** Mr. Collis, Mr. Dronenburg, Mr. Bennett, Mr. Carpenter and Ms. Baker present.

<u>Conway H. Collis</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Paul Carpenter</u>	, Member
<u>Anne Baker*</u>	, Member

*For Gray Davis, per Government Code section 7.9